Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1995

Ralph Shirley Stowe
Petitioner,
v.
United States of America,
Respondent,

On Petition For Writ Of Certiorari in the form of Coram Nobis
Of The Judgment Of The United States Court of Appeals
For the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Ralph Shirley Stowe,
BY LIMITED SPECIAL APPEARANCE,
IN PROPRIA PERSONA [NOT PRO SE],
IN SUMMO JURE, AND IN JUS REGINUM
% 14403 St. Andrews Drive
Grandview, republic of Missouri [64030]
Available at phone number (816)767-0900

68 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Whether the Respondent properly established jurisdiction over Petitioner? Whether District Court is authorized jurisdiction over Petitioner, who is a Missouri state citizen, in the absence of a contractual agreement? Whether the Federal District Court can sustain Federal jurisdiction over the UNENFRANCHISED Natural born Freeman Petitioner, in the absence of his granting jurisdiction, who is outside of the territorial boundaries limited by the United States Constitutional provisions in Article I, Section 8, Clause 17 and outside the Buck Act?

II.

Whether Notice of Federal Posted private property, non-federal land, land within the boundaries of the State of Missouri (not leased nor owned by the Federal Government) gave bar to agents to enter upon property and attempt seizure without court order?

III.

Whether IRS agents and special agents were duly authorized to act against Petitioner by Treasury Delegation Orders, and as such were actually acting in their official capacity within their scope of authority and jurisdiction? If so, whether IRS agents and special agents followed administrative due process, and as such were actually acting in their official capacity within their scope of authority and jurisdiction?

IV.

Whether Petitioner has the right to defend his property and protect the safety of his patients against warrantless search and seizure? Warrant was not obtained nor due process established thereby violating the rights of Petitioner under the:

Constitution of the United States of America, Article IV "The right of the people to be secure in their persons,

houses, papers and effects against unreasonable searches and seizures shall not be violated..."

Constitution of the United States of America, Article V "...nor be deprived of life, liberty or property without due process of law..."

Constitution of the United States of America, Article VII "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

Constitution of the United States of America, Article IX "The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people."

V.

Whether Jurisdiction squarely challenged by Petitioner can be allowed to the Respondent by the court without the court requiring Respondent to establish jurisdiction?

VI.

Whether denial by the court of Grand Jury information injured Petitioner? Was the Grand Jury biased by the prosecutor? Records were denied to Petitioner, thereby injuring Petitioner in preparation of his defense.

VII.

Whether Magistrate Hays showed preference to Respondent (three affidavits 10-28-94) and thereby injured Petitioner?

VIII.

Whether denial by court of information relative to tax-related issues and information of prospective jurors injured Petitioner?

IX.

Whether conflicting testimony of Respondent's witnesses, Kimberly Clementi and Mark Weber, constituted perjured testimony and thereby injured Petitioner?

X.

Whether the court could enter a Judgment against Petitioner

repugnant to that which has been statutorily set by Congress. Whether the specific Judgment entered by Judge Bartlett, which is in excess of that allowed by Congress in 26 U.S.C. 7212(b) can be allowed to stand. Rutledge v United States, 116 S.Ct. 1241 (1996) Judgment cannot be applied relative to a statute for which no implementing regulations exist. United States v Mersky, 361 US 431, 438, 4 L.Ed.2d 432, 80 S.Ct. 459.

XI.

Whether the Federal Government, through its agent Judge Bartlett, can compel Petitioner into specific performance to complete tax forms without exhibiting the specific statute by which Petitioner is made liable to perform a known duty and in the absence of any notice by the Secretary of Treasury and beyond the scope of legislative punishment prescribed by 26 U.S.C. 7212(b)? Rutledge v United States, 116 S.Ct. 1241 (1996)

LIST OF PARTIES TO THE PROCEEDINGS BELOW

United States of America
Judge McMillian (Appeals Court only)
Judge Wollman (Appeals Court only)
Judge Murphy (Appeals Court only)
Judge D. Brook Bartlett (District Court only)
Magistrate Sarah W. Hays (District Court pre-trial only)
Richard J. Marien, Deputy U.S.Attorney
Ralph Shirley Stowe
Federal Public Defender's Office (District Court only)
John R. T. Mitchell, Attorney (District Court only)
Jerrold M. Hartke, Attorney (District Court only)
Karl Francis (Bacon) Granse, Counsel (District Court only)
F. A. White, Jr., Attorney (District Court only)
Mark Osterman, Attorney (District Court only)
William H. White, Defendant (District Court only)
David H. Johnson, Attorney (District Court only)

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REPORT OF THE OPINIONS OF THE EIGHTH CIRCUIT

A Plea Agreement was reached and plea of guilty on Count 3 was entered by Ralph Shirley Stowe on November 11, 1994 during trial in the Eighth District Court, Western District of Missouri (Kansas City) and a mistrial declared. Judgment was filed in the District Court on July 24, 1995 as United States v Stowe, 94CR00101-1. The opinion of the Eighth Circuit Court of Appeals is unpublished filed on March 8, 1996 as United States v Stowe, 95-2971WMKC (8th Cir. 1994). The order of the court of Appeals denying rehearing and the suggestion of rehearing *en banc*, filed April 19, 1996 is also unreported.

STATEMENT OF SUPREME COURT JURISDICTION

The sentencing of Petitioner by the judgment of the United States District Court for Western Missouri was entered on July 24, 1995. A timely notice of appeal was filed on August 1, 1995. Petitioner's conviction was affirmed by the Court of Appeals on March 6, 1996 and filed on March 8, 1996. On April 19, 1996, the Court of Appeals denied Petitioner's request for rehearing and rehearing *en banc*.

This Court's jurisdiction to review the Court of Appeals' decision is conferred by 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS OF THE CASE

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, ...secure the Blessings of Liberty to ourselves and our Posterity,...

Article I. Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I. Section 8. The Congress shall have Power To... define and punish Piracies and Felonies committed on the high Seas,

and Offenses against the Law of Nations;... To exercise exclusive Legislation in all Cases whatsoever, over such district (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings; -- And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article I. Section 9. No Title of Nobility shall be granted by the United States;

Article III. Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article IV. Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State....

Article IV. Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Article IV. Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion;

Amendment I. Congress shall make no law respecting ...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V. No person shall... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; ... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI. In all criminal prosecutions, the accused shall enjoy the right to... trial, by an impartial jury...

Amendment VIII. Excessive ... fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIII. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIII. Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV. Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF PROCEEDINGS AND DISPOSITION

IRS Administrative procedures were violated. IRS failed to exhibit any implementing regulations authorizing actions against Appellant. "... we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone" California Bankers Ass'n v Schultz, 416 U.S. 21 (1974).

On June 15, 1994, in the Western Division of the Western District of Missouri, Petitioner Ralph Shirley Stowe was indicted along with William H. White, II in a three count indictment, charging two counts of reclaiming seized property [26 U.S.C. 7212(b)] and one count of assaulting a federal officer in the performance of his duties [18 U.S.C. 111]. United States v Stowe, No. 94-0010-01/02-CR-W-9.

"It is undisputed [The Internal Revenue Service] Manual controls the actions of Revenue Officers, and the Officers are obligated to follow its mandates." Romagnoio v United States, 96-1 USTC. The Manual distinguishes between BATF agents and IRS agents at Part XXXIV, Chapter 34(11)00, Section (34)11)20, (10)(a). The Manual specifically identifies only BATF agents, and not IRS agents, as being included in the scope of 18 U.S.C. 1114 (referred to in 18 U.S.C. 111) at Part XXXIV, Chapter 34(11)00, Section (34)11)20, (13)(a)5a. Petitioner was injured by being incorrectly charged with 18 U.S.C. 111.

On June 15, 1994, before the above indictment was issued by the Grand Jury, Petitioner Stowe was contacted from U. S. Attorney's Office by Mr. Rick Marien and informed "the Grand Jury is about to bring down an indictment against you and a Mr. White. You need to contact..." Document 23.

On June 27, 1994 Petitioner appeared before U.S. Magistrate Judge Sarah W. Hays and challenged jurisdiction. Petitioner was not arrested nor was a warrant for his arrest EVER presented to him. Magistrate Hays ignored challenge and Ordered an Omnibus Hearing and Arraignment set for July 7, 1994.

On June 27, 1994 Petitioner filed motions challenging jurisdiction and requesting information relative to the indictment. Documents 14, 15, and 16.

Petitioner appeared on July 7, 1994 and again challenged jurisdiction and presented other motions to the Court asking for the specific statute and implementing regulations for which he was charged. The Court ignored Petitioner's motions and proceeded. Documents 19, 20, 21, 22, 24, and 25.

Plea was entered by William H. White, II on Count 2.

Petitioner Stowe was tried by a jury commencing on November 7, 1994. During the trial, on November 8, 1994, Petitioner believed that justice was not being allowed and felt it in his best interest to accept a plea bargain offered by Respondent. Petitioner believed he was being subjected to double jeopardy by the indictment and was encouraged by counsel to accept the agreement to minimize possiblity of the threatened 20 years in jail and threatened fine. The Court dismissed Count 1 upon motion of Mr. Marien, as per the plea agreement, and the Court accepted the plea of guilty on Count 3 on November 11, 1994. Petitioner motioned the court to withdraw the Guilty Plea, and the court denied the motion. Judgment was entered by the District Court on July 24, 1995. While the statute 26 U.S.C. 7212(b) provides for a penalty of either $500.00 fine or a maximum of two years imprisonment, Judge Bartlett ordered Petitioner's sentence to include:

- Probation for 5 years;
- Halfway House confinement for 2 months;
- Electronic Home confinement for 3 months;
- Community service as approved by Probation Officer;
- Mental Health counseling with emphasis on anger control;
- Payment for Halfway House confinement;
- Payment for Electronic Home confinement;
- Payment of $50.00 assessment to court;
- Prohibited entering IRS offices without prior approval;
- Prohibition from traveling outside Western Division geographical boundary without permission;

- Prohibit traveling into any area not approved by Probation Officer;
- Filing "truthful income tax pursuant to the administrative Regulations of the Internal Revenue Service".

Judge Bartlett pronounced this sentence with discregard to the Supreme Court's decision that "Courts may not prescribe greater punishment than the legislature intended." Rutledge v United States, 116 S. Ct. 1241 (1996).

On August 1, 1995 Petitioner filed a timely appeal to the United States Court of Appeals for the Eighth Circuit, whose jurisdiction was invoked under 28 U.S.C. 1291, conferring jurisdiction upon a court of appeals to hear a direct appeal in a criminal case.

On January 31, 1996 William H. White, II was dismissed on Count 2 by Judge Bartlett in the Western District of Missouri.

On March 6, 1996, the Eighth Circuit affirmed Petitioner's conviction and judgment. On April 19, 1996, that court denied Petitioner's request for rehearing and rehearing *en banc*.

On May 30, 1996 Judith Strong, Assistant United States Attorney made APPLICATION OF THE UNITED STATES TO ENTER PREMISES TO EFFECT LEVY [In the Matter of the Tax Indebtedness of: Ralph Shirley Stowe, Case 96-MC-9032-3], without having first adjudicated the issue of the actual indebtedness. United States District Judge Fernando J. Gaitan, Jr. signed ORDER FOR ENTRY ON PREMISES TO EFFECT LEVY on May 30, 1996. On June 5, 1996, the IRS, through its agent Kimberly Clementi, took control of the property and removed many items including the original of this Brief and documents necessary for this Brief to the Supreme Court from Petitioner. Petitioner asks this court to allow for this travesty while viewing and considering this petition.

STATEMENT OF FACTS

On October 19, 1992 Petitioner was made aware that he had unknowingly, prior to the age of majority, agreed to a contract waving many of his Constitutional Rights. After discovery of this fraud, Petitioner took action to nullify such contract(s) and re-establish all of his free-born constitutional and God-given rights.

On October 20, 1992, Petitioner, acting in good faith, "for cause", and due to his deeply held religious convictions, lawfully terminated his contract (membership) in the Federal Social Security program by the legal act of Revocation.

> "Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient AWARENESS of the relevant circumstances and likely consequences." Brady v United .States, 397 US 742, 748.

and... Constructive fraud as well as actual fraud may be the basis of cancellation of an instrument. El Paso Nat. Gas Co. v Kyser Ins. Co., 605 P 2d 240 (1970); see also: Tyler v Sec of State, 184 A 2d 101 (1962).

also... "No act of Congress can authorize a violation of the Constitution." Almeida Sanchez v United States, 413 US 266, 37 LEd 2d 596, 93 SCt 2535 (1973), at page 272.

These legal acts (revocation of Social Security membership, surrender of Social Security number, demand for jurisdiction / authority, information from Internal Revenue Service, and notice of challenge and disclaimer of same) were sent certified mail/return Receipt to the appropriate State and Federal government agencies with notice that "it is a principle of law, that, once challenged, the person asserting jurisdiction --- MUST PROVE THAT JURISDICTION TO EXIST AS A MATTER OF LAW. See Griffin v Matthews, 310 F Supp 341, 423 F 2d 272; McNutt v General Motors, 56 SCt 789, 80 LEd 1135; Basso v U.P.L., 495 F 2d 906; and Thompson v Gaskiel, 62 SCt 673, 83 LEd 111."

The government agencies were given thirty (30) days in which to dispute Petitioner's claims and establish their jurisdiction before a lawful tribunal. In not having timely challenged Petitioner's

Right to cancel and dissolve said membership contract, the Federal Government MUST BE DEEMED AS HAVING ACCEPTED THE SAID ASSEVERATION.

The appropriate membership identification number was submitted and the various agencies were Noticed to expunge their records of said number, a number that has negative and evil connotations pursuant to the Holy Bible.

The Status of Petitioner, is now that of an UNENFRANCHISED INDIVIDUAL and a NON-TAXPAYER. Appellant is not an entity under the Uniform Commercial Code, has no nexus with the Federal Government, and is not subject to income tax pursuant to Amendment XIV [See Stanton v Baltic Mining Co., 240 U.S. 103, 112 (1916)]. He is an individual that lives outside of the Federal Territory of the United States Government and not under the Buck Act.

On April 15, 1994 four unknown people, later identified as two IRS agents and two IRS special agents, presented to Petitioner's place of work and entered into the building on private land, within the republic of Missouri, which was posted NO TRESPASSING. Notice of the NO TRESPASSING POST had been served upon IRS agents by Registered Mail. Trespass was without benefit of invitation, appointment, warrant, or judicial authority. The IRS agents entered the building in which Petitioner practices chiropractic during hours devoted to patient care. The four people (later identified as IRS agents) were asked what they wanted by Petitioner. One of the intruders (later identified as Kimberly Clementi) claimed that they were there to seize Petitioner's car. Petitioner had sent Notice of Federal Post to Agent Clementi. This court must surely see the implications which precipitate from these facts. [Agent Clementi later testified she did not receive notice of federal post, but the testimony of Agent Weber claims he had been shown the document by Clementi.]

Petitioner asked the intruders if they had a court order. They said no. Appellant asked the intruders if they had a Sheriff with them. They said no. Appellant asked the intruders if they had

any legal paperwork authorizing them to take the car not owned by Petitioner (Document # 79). The agents said they had a Notice of Seizure. Petitioner informed the agents that he did not own the vehicle, that he was not a government employee as required for use of Form 668B, and that they, as intruders, must leave. The agents said they were going to take the car anyway. Petitioner said he was going to call 911 and attempted to retreat to a phone. One of the agents, later identified as Special Agent Deborah McCambridge, stepped forward and attempted to prevent the door from closing and to enter into an area proximal to patient care. The Petitioner perceived this as an attack upon himself and a threat to the safety of his patients. Petitioner managed to repel the entry by the agent and close the door. Immediately Petitioner called 911 to summons the Jackson County Sheriff. Petitioner then, by display of available force, discharged the four people out of the building and off the property. When the Kansas City Police arrived [instead of the County Sheriff due to the dispatch of the 911 system] Petitioner acquiesced to the decision of the police to allow the (now identified) IRS agents to take a car from the fenced and gated lot in front of the building on the posted private property (Document # 79). The car was leased by Petitioner, not owned. Petitioner was arrested by the Kansas City Police upon a verbal statement by the agents and held for about 7 hours, finger printed, photographed, and released. The Kansas City Police never officially charged Petitioner with a crime, but initially told him he was under arrest for assault.

Subsequently, on June 15, 1994 the U.S. Attorney called Petitioner and informed him that the Grand Jury would be "bringing down" an indictment and that Petitioner should make arrangements to surrender himself, to prevent a U.S. Marshall from coming to Petitioner's clinic while patients may be present. This, before the decision of the Grand Jury was made known. (Document # 23)

On June 15, 1994, a federal grand jury sitting in Kansas City, Missouri returned a three count indictment in which Petitioner was charged in Counts One and Three. Petitioner was charged by indictment with the alleged offenses of 18 U.S.C. 111[Count 1

against Petitioner] and 26 U.S.C. 7212(b) [Count 2 against William H. White, II, and Count 3 against Petitioner]. The grand jury failed in its primary obligation to state how force was applied and what implementing regulations were violated. Simply the presence of a threat or force is not sufficient. See United States v Camp, 541 F.2d 737. Additionally, the indictment placed Petitioner in double jeopardy for the act. Rutledge v. United States, 116 S.Ct. 1241 (1996).

Petitioner was refused a copy of the arrest warrant by both the pretrial services and the U. S. Marshall but was allegedly arrested on said charge on June 15, 1994. To date no arrest warrant has been supplied.

In failing to recognize the Status of Petitioner, Ralph Shirley Stowe, who had executed surrender of the assigned Social Security Number and executed a Second Codicil to the Label 1040 for cause, the government did proceed in the Federal District Court with an action, notwithstanding the fact that the Status of Petitioner, as a natural person, did place Petitioner beyond the jurisdiction of the Federal District Court in the Western District of Missouri.

JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, Report Of The Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, Part I The Facts and Committee Recommendations, April 1956, and Part II A Text of the Law of Legislative Jurisdiction, June 1957, Submitted to the Attorney General and transmitted to the President reserves jurisdiction over the Petitioner, the land upon which Petitioner was found, and the vehicle in question, to the state. Petitioner was on private, fenced land, with federal trespass posts and state statutory no trespass markings.

When a government agent attempts to exercise his authority in a state (republic member of the union of the United States of America) he must obey state laws. United States v Birns, 223 F.Supp 94; 26 Ohio Op. 2d 116; 64-1 U.S. Tax Cas (CCH) P9234; 13 A.F.T.R.2d (P-H) 493. The lower court cited United States v. Stewart, 972 F.2d 216 (8th Cir. 1992). However, that case differs

therein by the fact that the Defendant, charged with drug offenses, had a warrant issued authorizing officers to act in good faith. Petitioner comes with a case in which Drugs are not an issue and no warrant was issued in the instant case before this court. Therefore, the agents did act outside their authority toward Petitioner and United States v. Stewart, 972 F.2d 216 (8th Cir. 1992) supports Petitioner's argument before the court.

Petitioner continued to challenge the jurisdiction of the Federal District Court and did rely on the U.S. Constitution, the decisions of the U.S. Supreme Court and other courts to support his claim all through the proceedings (Documents # 19, 22, & 23). However, the court did fail to regard the jurisdictional issue seriously (Documents # 17). Petitioner has relied upon his constitutionally guaranteed common law protection which "consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature." Bishop v United States, 334 F. Supp. 415 at 418. Petitioner also states and holds views upheld by references, to include Supreme Court cases. Hooven & Allison Co. V Evatt, U.S.Ohio, 324 U.S. 652, 65 S.Ct. 870 at 880, 89 L.Ed. 1252 sheds light upon the confusion expressed by Respondent relative to understanding the concept of United States citizenship. This case incorporates the explanation in the Harvard Law Review, Volume 12, Number 6, January 25, 1899 which defines three separate meanings for United States. Petitioner claims citizenship of the united States of America and citizenship of the republic of Missouri. Petitioner maintains that the District court did not have jurisdiction over him for reasons stated and that he is not under the Buck Act. Additionally, the lower court refused to allow Petitioner his assistance of counsel of his choice and assigned an attorney-of-record to Petitioner.

Petitioner asked for tax information relative to prospective jurors. United States v Holden, 963 F.2d 1114 (8th Cir. 1992) Cites United States v Lussier, 929 F.2d 25 at 30 in that district courts are

to take reasonable and feasible steps to enable a defendant, who makes a clear and timely request to procure information before the swearing of the jury, information relative to potential jurors' bias. Court should have granted request for list of jury panelists. The next best alternative to a full response from another source is acceptable if the court's schedule would not reasonably tolerate such a delay. In the above cited case, the **district court asked** the jurors if they had ever been audited by the Internal Revenue Service or involved in a case or dispute with the United States. None of those who spoke up served on that jury. In the case at bar, Judge Bartlett made no such inquiry to the potential jurors in this case Petitioner appeals. In United States v Axmear, 964 F.2d 792 (8th Cir 1992): "Before voir dire, the district court stated it would ask the jurors whether they had ever been audited or investigated.". Petitioner was deprived of this by Judge Bartlett.

The pleading of the government used an invalid Tax Payer-Identification Number 356-34-9695 for the purpose of compelling Petitioner into specific performance on a contract that no longer existed and which they had been duly noticed by registered mail, had been terminated on October 20, 1992.

Count three relied upon count one, thereby violating double jeopardy toward Petitioner. "To determine whether a ... prosecution is barred by the double jeopardy clause, court must first apply the traditional Blockburger test ... [which] protects against multiple punishments for the same offense." Grandy v Corbin, 495 U.S. 508, 109 L.Ed.2d 548, 110 S.Ct. 2084 at 2085 (Decided May 29, 1990).

Count one was dismissed by plea bargain. Counts two and three were in alleged violation of 7212(b) charging Petitioner in Count three and William White in Count two. "Co-defendant White did get into the vehicle and began to drive the vehicle before he was stopped by police officers who had arrived on the scene. It was this latter conduct which supported Petitioner's, as well as co-defendant William White's pleas of guilty. (Sentencing Transcript, 28)" Brief for Appellee, page 3. On January 31, 1996, Chief United States

District Judge D. Brook Bartlett ORDERed Count two against William White DISMISSED (Document #167). This alone should require this court to reverse the decision of the lower court and dismiss with prejudice Count three, alleged violation of 26 U.S.C. 7212(b). "[T]hat the convictions ... were constitutionally invalid ..[s]ince those convictions have been set aside, it follows ... that, therefore, the convictions of these petitioners must also be set aside." Shuttlesworth v Birmingham, 373 U.S. 262.

Petitioner has constantly claimed all of his inalienable rights all of the time and never at any time has he waived any of his inalienable Rights since October 20, 1992. Therefore, the Government's claim of jurisdiction over Petitioner is UNCONSTITUTIONAL. The Status of Petitioner makes him an alien with respect to Federal Jurisdiction. Therefore, Original Jurisdiction must lie within the United States Supreme Court and not the District Court (FRCrP Rule 54).

Respondent is well aware that Ralph Shirley Stowe does not live or work upon Federal territory, that he does not receive government contractual privileges and/or benefits, and the Petitioner is not involved in any revenue taxable activities as set forth in the IR Code (Title 26).

Challenged by Petitioner, the lower court did not require Respondent to establish jurisdiction. Petitioner maintains that his Missouri address, Title 26 U.S.C., and Title 28 U.S.C. are not sufficient to provide Respondent and the District Court jurisdiction over Petitioner.

The Government DID HAVE notice of Petitioner's change in Status nineteen (19) months before they instituted their action which precipitated events now herein in review. Petitioner duly moved to substantiate his standing and status of being a Freeman as set forth by pleading and jurisdictional challenges in the lower court.

The District Court, the government, the IRS, and Respondent have all failed to recognize the Documented Status of Petitioner, which has clearly been set forth and maintained.

Other Federal Courts seem to be familiar with the term "non-

taxpayer" as they address themselves to this status when and where it is appropriate:

> "The revenue laws are a code or system in regulation of tax assessment and collection. **They relate to taxpayers, and not to non-taxpayers**. The latter are without their scope. **No procedure is prescribed for Non-Taxpayers**, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws... Economy Plumbing & Heating v S.S., 470 F 2d 585 (1972); Stuart v Chinese Chamber of Commerce, 168 F 2d 709 (1940);" Long v Rasmussen, 281 F 236, 238; Rothensis v Ullman, 110 F 2d 590; Rafaele v Granger, 196 F 2d 620; Bullock v Latham, 306 F 2d 45.

The 1954 Tax Code is premised upon the Corporation Excise Tax Act of 1909 and is not applicable to non-incorporated entities, the "Non-Taxpayers".

> "Persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for tax-payers such as the filing of claims for refunds..." Hale v Henkel, 201 US 43 (1906) at page 89.

and... "... we are of the opinion that there is a clear distinction ... between an individual and a corporation ... the individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. **He owes no duty to the State** or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him." Hale v Henkel, 201 US 43 (1906) at page 74.

A Natural Freeborn "owes no duty to the State", neither can he be compelled into specific performance without the nexus of contract, for such would be a violation of Constitutional Rights. The Supreme Court (Oregon) favors the position of Petitioner as follows:

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed." Redfield v Fisher, 292 P 813, 819 (1930).

The term "taxpayer" is defined, in 26 U.S.C. 7701(a)(14). According to that section, the legal term "TAXPAYER" does not mean "any person who pays taxes", but is defined as "...any person subject to any internal revenue tax".

Notwithstanding the Petitioner's status, Respondent did falsely proclaim before the Courts and before the world that Petitioner held membership in Government's order, known as Social Security.

The Government, although in possession of Petitioner's surrender of his Social Security Number, continued to use the invalid Number, 356-34-9695 in its pleading.

In this instance, the government is using FRAUD and DECEPTION as a guise to maintain their unfounded "jurisdiction" to exceed the letter and scope of the Federal Tax Laws. Contrary to the actions of the courts and the Federal Government, the laws of the United States do not apply to every square inch of the country known as the "United States of America".

History reveals that in July, 1776, the new States possessed all sovereignty, power, and jurisdiction over all the soil and people in their geographical boundaries or respective territorial limits. This was reflected from the "Articles of Confederation" where it was expressly stated:

"Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled." Article II.

The Brown Court made remarks that must be placed in our consideration as we proceed:

"There was no territory within the United States that was claimed in any other right than that of some one of the confederated states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states. Each declared itself sovereign and independent, according to the limits of its territory.

"[T]he soil and sovereignty within their acknowledged limits were as much theirs at the Declaration of Independence as at this hour." Brown v Maryland, 12 Wheat 419, (1827) at pages 526, 527.

With the enactment of the United States Constitution, the National Government was created and provided with limited power, ie. jurisdiction by the sovereign States to the extent provided by the U.S. Constitution, which affixes the **limitation** of federal jurisdiction (see Seminole Tribe of Florida v Florida, 116 S. Ct. 1114 (1996)), to wit:

"The Congress shall have Power... To exercise exclusive Legislation in all Cases whatsoever, over such district (not exceeding ten miles square) as may be by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings." Constitution of the United States of America Article I Section 8 Clause 17.

The above named places are the Territories over which the federal district courts shall have original jurisdiction of all crimes committed thereon, and Jurisdiction beyond Constitutionally restricted areas **DOES NOT EXIST** with respect to Petitioner, who relies upon Clause 17 for his protection from Federal Jurisdiction. This reliance is embodied in Federal Rules of Criminal Procedure Rule 54. Application and Exception:

"(a) Courts. These rules apply to all criminal proceedings in

the United States District Courts; in the District [Court] of Guam; in the District Court for the Northern Mariana Islands, except as otherwise provided in articles IV and V of the covenant provided by the Act of March 24, 1976 (90 Stat. 263); in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone [Code]) in the United States District Court for the District of the Canal Zone; in the United States Courts of Appeals; and in the Supreme Court of the united States; except that the prosecution of offenses in the District Court of the Virgin Islands shall be by indictment or information as otherwise provided by law."

and... "(b)(1) Removed Proceedings. These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure **after** removal, except that dismissal by the attorney for the prosecution shall be governed by **state law**."

and... "(b)(2) Offenses Outside a District or State. These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by 18 U.S.C. 3238."

and... "(c) Application of Terms. As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession...

"District court" includes all district courts named in subdivision (a) of this rule."

Not the republic state of Missouri, nor its land, nor its citizens are within the jurisdiction of the District Court. This is reiterated in U.S. v Rhodes:

"What is unwarranted or forbidden by the constitution can no more be done in one way than in another. The authority of the national government is limited, though supreme in the

> sphere of its operation. As compared with the state governments, the subjects upon which it operates are few in number. Its objects are all national. It is one wholly of delegated powers. The states possess all which they have not surrendered; the government of the Union only such as the constitution has given to it, expressly or incidentally, and by reasonable intendment." United States v Rhodes, (Case No. 16, 151) [27 Fed Cas at page 790].

The legislative power of Congress was prevented from reaching beyond its Geographical borders by Mandate of the U.S. Constitution. Exclusive Federal Jurisdiction over Federal Territory had been established, and Federal property within each State is subject to the Permission granted by the respective Legislature of the Sovereign State.

> "The exclusive jurisdiction which the United States have in forts and dockyard ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein." United States v Bevans, 16 US (3 Wheat) 336 (1818) at pages 350, 351.

Title 18 U.S.C. 3231 of the U.S. criminal code says that "the district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

' "It is emphatically, the province and duty of the judicial department, to say what the law is." *Marbury v Madison*, 5 U.S. 137, 177, 1 Cranch 137, 2 L.Ed. 60 (1830). Indeed, "[t]his is the very essence of judicial duty." *Id.* at 178; *see also, Bell v Maryland*, 378, U.S. 226, 244 84 S.Ct. 1814, 1824, 12 L.Ed.2d 822 (1964) (Douglas, J. Concurring). Therefore, though not written into the Constitution, the power of judicial review has become a bedrock principle of our jurisprudence. In exercising this power, the Court must be mindful that "[t]he powers of the legislature are defined and limited; and that those limits may not be mistaken or

forgotten, the constitution is written." *Marbury*, 5 U.S. at 176. [Footnote 3: "Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void." *The Federalist No. 78* (A. Hamilton).] ' United States v Wilson, 880 F. Supp. 621, at 623 (E. D. Wis. 1995).

In criminal prosecutions, where the federal government is the moving party, they must not only establish ownership of the property upon which said crime was committed, but they must also produce documentation that the State has ceded that property to them and that it has voluntarily waived all the State's jurisdiction over said property. The U.S. Supreme court has addressed this issue and has held that:

> "Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor." Fort Leavenworth Ry. Co. v Lowe, 144 US 525 (1885).

People outside of the prescribed exclusive federal jurisdiction are beyond the legislative power of Congress, which power includes all the Federal Titles.

The 50 Sovereign States, having separate jurisdictions, are **FOREIGN** to each other and each jurisdiction is distinctly divided by geographical boundaries. The citizens of each state are protected from the **FOREIGN** jurisdictions of other States and countries, which is in harmony with the law of nations.

> "In legislating for territories, Congress exercises the combined powers of the general and of a state government." Am. Ins. v 356 Bales of Cotton, 26 US 511.

The limited jurisdiction of the Federal Government can correctly be viewed as being a 51st State, which said jurisdiction renders Petitioner an alien and a stranger.

State jurisdiction vs. Federal jurisdiction has been decided by the United States Supreme Court as follows:

"If we look at the place of its operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction." New York v Miln, 36 US (11 Pet.) 102 (1837) at 133.

and... "They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States." New York v Miln, 36 US (11 Pet.) 102 (1837) at 139.

During the Eisenhower Administration the Federal Government felt there was a need to more clearly delineate the difference between State and Federal Jurisdictions. An interdepartmental committee, chaired by Assistant Attorney General Perry W. Morton, was organized December 15, 1954, to compile "Jurisdiction Over Federal Areas Within the States". Their findings were compiled in two separate volumes. The first volume was completed by April 26, 1956, and volume II was completed by June 17, 1957.

The late President Eisenhower acknowledged the completion of volume II, as follows:

The White House, Washington, July 8, 1957 (in part)...

"Dear Mr. Attorney General:

I have taken note of the final report... rendered by the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States... report is to be published and distributed, for the purpose of making available... this text of the law of legislative jurisdiction in these areas.

"This monumental work... lays an excellent foundation for allocating to the States some of the functions which under our Federal-State system should properly be performed by State governments.

" Sincerely, /s/ Dwight D. Eisenhower, Volume II,

at page iv.

This work provided a guide for Governmental Agencies to conduct their affairs properly as they dealt with Federal property and Federal Possessions situated within the foreign boundaries of the several states.

Due to the Jurisdictional limitations set forth in the Constitution and, due to Petitioner's total absence of Federal Contracts with the IRS, the Federal Government is estopped from reaching beyond their own geographical boundaries and into that of a foreign state, such as the Sovereign State of Missouri, to assert their Jurisdiction over Petitioner, whose Status renders him to be an alien with respect to the Federal Government.

The Federal government, in failing to show any NEXUS between themselves and Petitioner, that would otherwise extend their Jurisdiction over the person and/or the property of Petitioner, did fail to overcome their **JURISDICTIONAL DEFECT** in the district court, where they were repeatedly challenged to prove their jurisdiction.

> "Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient **awareness** of the relevant circumstances and likely consequences." Brady v United States, 397 US 742, 748 (Emphasis added.)

Sufficient evidence from the Courts indicate that Petitioner can cancel and invalidate **any** fraudulent contract.

> "The essential elements of an enforceable contract are parties competent to contract, a proper subject matter, legal consideration, mutuality of agreement and obligation." Bengiminia v Allen, 375 SW 2d 199, 202 (MoApp 1964) 2 R Anderson, Uniform Comm. Code Sec 2-204:11 at 204 (1982); Computer Network v Purcell Tire & Rubber, 747 SW 2d 669 (Mo App 1988) at 675.

The Law Merchant of Chapter 24, IR Code will not compel an unwilling party into a contractual nexus with the Federal Government.

> "I might suggest that it would likewise be inequitable to hold one bound to a contract that was not mutually agreed upon by the parties thereto. The law merchant is harsh, but still it only enforces mutual agreements." Swanson v Fuline, 248 F Sup 364 (USDC Ore. 1965).

No matter how many times the IRS or the U.S. Attorney allude to Petitioner as a "taxpayer" or "tax-protestor", the facts of law remain to justify the Status of Petitioner.

Any claim that the issue of **JURISDICTION** is frivolous and is without merit is contrary to numerous U.S. Supreme Court decisions plus the monumental two volumes of "Jurisdiction Over Federal Areas Within the States" that was mentioned earlier.

Stated within the Constitution of the United States of America, Article XIII, Section 1, is:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been convicted, shall exist within the United States, or any place subject to their jurisdiction."

Because the Federal government is mandated to uphold the Constitution, they must uphold the 14th Amendment also, therefore, they cannot disallow a natural born citizen from terminating his contract with the Federal government, otherwise, such an act would act to promote involuntary servitude and/or peonage.

The jurisdictional claims propounded by the Respondent, and granted by the lower court, did exceed the parameters set by the United States Constitution, therefore, said Respondent did fail to prove their jurisdiction, which proved to be a fatal defect. Under federal system, states possess primary authority for defining and enforcing criminal law. See United States v Lopez, 115 Sct. 1624 and United States v Mussari, 894 Fed Sup 1360. Also see United States v Wilson, 880 F. Supp 621 (E. D. Wis. 1995)

> "Once challenged as to jurisdiction, the person which asserts jurisdiction must assume burden of proving same." Thompson v Gaskiel, 62 SCt 673.

and... "Once state and federal jurisdiction challenged, it must be

proved." Maine v Thiboutot, 100 SCt 2502.

Because the Federal Government, being the moving party, failed to prove challenged jurisdiction, their case appears to be a nullity.

> "Where absence of proof of jurisdiction, all judicial proceedings are nullity." Thompson v Tolmie, 2 Pet 157, 7 LEd 381; Griffin v Frazier, 8 Cr 9, 3 LEd 471.

Jurisdictional matters should be very carefully screened by the District Court if individual's life, liberty and property are to be Constitutionally protected and preserved.

> "Where rights secured by Constitution are involved, there can be no rule making or legislation, which would abrogate them." Miranda v Az., 86 SCt 1602, 384 US 436 at 491.

In the absence of Federal Contract, the absence of Petitioner's consent, and in the absence of having original jurisdiction, the district court did proceed in an attempt to penalize Petitioner for no reason other than his reasonable challenge of authority, lacking due process being sought by Respondent. Respondent seems to want to apply the "old time Roman Church law" under Caesar's laws where in the "first fruits" went unto Caesar instead of **to God**. The district court refused to separate the two jurisdictions; the jurisdiction of God from that of Caesar. However, the Supreme Court in Church of the Holy Trinity v United States, 36 F. 303, rev R S.Ct. 511, 143 U.S. 457, 36 L.Ed. 226 expressed its understanding that the government existed only by the grace of God and "[a]ll laws should receive a sensible construction".

Jesus and Peter were taxpayers under the statutory authority of the government because of their citizenship class.

> "And Jesus answering said unto them, render to Caesar the things that are Caesar's and to God the things that are God's..." Mark 12:17; Luke, 20:25.

Paul, however, was a citizen with rights by virtue of his birth and residence.

> "I am verily a man which am a Jew, born in Tarsus, a city in Cilicia, yet brought up in this city at the feet of Gamaliel, and taught according to the perfect manner of the law of the

fathers, and was zealous toward God, as ye all are this day." Acts 22:3.

and... "And as they bound him with thongs, Paul said unto the centurion that stood by, 'Is it lawful for you to scourge a man that is a Roman, and uncondemned?' When the centurion heard that, he went and told the chief captain, saying, 'Take heed what thou doest: for this man is a Roman.' Then the chief captain came, and said unto [Paul], 'Tell me, art thou a Roman?' [Paul} said, 'Yea.' And the chief captain answered, 'With a great sum obtained I this freedom.' And Paul said, 'But I was free born.' Then straightway they departed from him which should have examined him; and the chief captain also was afraid, after he knew that he was a Roman, and because he had bound him." Acts 22:25-29.

Who will dispute the jurisdiction of the **ALMIGHTY**? Who then, will dispute Petitioner's rights pursuant to the Constitution of the United States of America, Amendment One? This matter does include Petitioner's First Amendment Rights that preserve his religious views:

"The earth is the Lord's, and the fullness thereof; the world, and they that dwell therein." Psalms 24:1.

Keeping the Lord's jurisdiction clearly in mind, let the following Scripture mandate Petitioner's Status:

"For he that is called in the Lord, being a servant, is the Lord's freeman: likewise also he that is called, being free, is Christ's servant. Ye are bought with a price; be not ye the servants of men." I Corinthians 7:22, 23.

The Prophet Isaiah, looking down the stream of time, with eyes that beheld the governments of men in these last days said:

"Woe to those who decree unjust statutes and to those who continually record unjust decisions, to deprive the needy of justice, and to rob the poor of My people of their rights..." Isaiah 10:1, 2.

Small wonder that Petitioner desires to worship God "in

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spirit and in truth", and does seek to exit this system of man's government that is in opposition to the laws of God!

> "And I heard another voice from heaven, saying, Come out of her, my people, that ye be not partakers of her sins." Revelation 18:4.

And those who will hear the Divine word will also be canceling their Memberships with Baal to be in compliance with the following:

> " Thou shalt make no covenant with them, nor with their gods." Exodus 23:32; 34:12, 15; Deuteronomy 7:2.

Likewise, this court recognizes the various definitions of United States as defined in Hooven & Allison Co. V Evatt, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252. Petitioner is not under the resolutions of Congress nor under the Buck Act by virtue of his place of birth and residence and thus is not subject to have his property taken by the whim of the IRS. "No act of Congress can authorize a violation of the Constitution." Almeida Sanchez v United States, 413 U.S. 266 at 272, 27 L.Ed. 2d 596, 93 S.Ct. 2535 (1973).

Just as Paul could not be forced into any government system, Petitioner can not be forced by mandatory membership which would severely restrict him from worshiping and serving Almighty God according to the provisions set forth in Divine Law!

Grand Jury was biased by prosecutor. All records of the grand jury, its make-up, and the tax status and information of each juror were denied to Petitioner by lower court, thereby injuring him in preparation of his defense.

Most authorities date the origin of the Grand Jury to the assize of Clarendon and the reign of Henry II in 1166. 2 Pollock and Maitland, The History of English Law, Page 642 (2Ed. 1909). It was there provided that twelve knights of "good and lawful men" of every hundred and four were to declare under oath the identities of those in the communities suspected of public offenses. All persons thus presented were then tried by ordeal. Failure to demonstrate innocence at the ordeal resulted in severe punishment.

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In the earliest stages, the grand jury was the instrument of the Crown. Its function was to conduct inquisitorial examinations of prisoners instead of a judicial inquiry into the facts of the case. Slowly the character of the institution changed during the period of the raging conflict between the rising English middle class and the power of the Crown. The grand jury system guarded against the oppression of unfounded accusation and abusive prosecution by the Crown. Younger, The People's Panel: The Grand Jury in the United States, 1634-1941(1963). It became a deterrent against politically motivated prosecutions and evolved into an agency responsible for protecting the individual from officially sanctioned oppression.

The grand jury became a part of the American legal system with the establishment of the British hegemony in the American colonies. By the end of the colonial period, the grand jury had become an indispensable part of government in each of the American colonies. Its power and purpose were broadened from that of its English parent.

> "Grand Juries served as more than panels of public accusers. They acted as local representative assemblies ready to make known the wishes of the people. They proposed new laws, protested against abuses in government, wielded tremendous authority in their power to determine who should and who should not face trial. They enforced or refused to enforce laws as they saw fit and stood guard against indiscriminate prosecution by royal officials." Younger, The People's Panel: The Grand Jury in the United States, 1634-1941(1963), page 26.

By the time the United States Constitution was adopted in 1789, the institution had evolved into a citizen's tribunal, set resolutely between the State and the individual. In principle, the American grand jury system was designed not only as a means of bringing to trial persons accused of public offenses on just grounds, but also as a shield for protecting the citizen against unfounded government accusation. When the framers of the Bill of Rights directed in the Fifth Amendment that:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury..."

they were not engaging in mere verbal exercise, in view of the important role the grand jury played during the colonial period.

History and the passage of time demonstrates that modern grand juries no longer serve their historical role. Grand juries have long ceased to be the guardians of the people and barriers against prosecutorial and government abuse. Today, the grand juries are often-times but a rubber stamp for the prosecutor who conceives its investigations, directs its proceedings, and drafts its indictments. Few, if any, prosecutors will seriously deny that they can secure a grand jury indictment against anybody, at any time, on the flimsiest of evidence, and in some cases, upon no evidence at all.

Prosecutorial abuse of the grand jury system lead to its abolishment in England by 1933. The English determined that the system no longer comported with modern notions of justice and due process. Despite its passing in the nation of its origin, the institution continues to persist in this country, even though it can be argued that its actions may ultimately compel a citizen to undergo the trauma of a felony trial based on the grand jury ex parte proceeding from which he and all his evidence were previously excluded. This is the case at bar.

If we are to continue to dignify the grand jury as a part of the American system of justice, we must appraise its function and operation against the fundamental safeguards of procedural and substantive due process. Corbin v Broadman, 6 Ariz. App. 436; 433 P 2d 289 (1969).

In Broadman, the Court was explicit in explaining that ground rules of procedural fairness which prosecutors and grand juries must follow, to-wit:

"The United States Supreme Court of late in a long series of cases has been rigidly upholding the equal protection and due process of law clauses of our Constitution. It has stated that where the right to a jury trial has been preserved, as it

has by all state constitutions, the failure to accord an accused a **fair trial violates even the minimal standards of due process**. Irvin v Dowd, 366 US 7171, 81 SCt 1639, 6 LEd 2d 751 (1961). In Beck v Washington, 369 US 541, 82 SCt 955, 8 LEd 2d 98 (1962), **the Supreme Court indicated the same standards of fairness should be applied to grand juries.** Although in Beck the Supreme Court determined that there was insufficient evidence that pretrial publicity, which was the issue in the case, had an adverse affect upon the grand jurors, it said that a state once resorting to a grand jury process clause the Fourteenth Amendment must furnish an unbiased grand jury. "The cases of law holding that a state electing to use the grand jury procedure must furnish an unbiased grand jury in a fair and impartial manner." 433 P 2d at 294. (Emphasis added.)

Thus, the Constitutional guarantee to be judged by fair and impartial tribunal applies to grand juries:

The Arizona Supreme Court considered a similar issue in Crimmins v Superior Court, 137 Ariz 39, 668 P. 2d 882 (Aug 3 1983). There the Supreme Court granted a defendant's special action because the trial court failed to remand his case for a new determination of probable cause before the grand jury. The court held that the State's inaccurate portrayal of the facts and failure to adequately instruct as to the law was a due process denial, in violation of Rule 12.9 of the Arizona Rules of Criminal Procedure, and such a denial required a remand for a new finding of probable cause.

The court pointed out that an accused is entitled to due process during grand jury proceedings, and that due process required the use of an unbiased grand jury and a fair and impartial presentation of the evidence. State v Emery, 131 Ariz. 493, 506; 643 P2d 838, 851d (1982).

In Basurto v United States, 497 F 2d 791 (9th Cir., 1974), the Court noted that grand juries traditionally rely heavily upon the prosecutor to initiate and prepare criminal cases. The Court also

noted that with the power and authority possessed by the prosecutor, there is a duty to prevent individuals from being forced to stand trial when the prosecuting authority is aware that perjury has been presented to the grand jury.

The Court held that the due process clause of the Fifth Amendment is violated when a defendant is forced to stand trial on an indictment when the government knows that such indictment is based partially on perjured testimony and when the perjured or distorted testimony is material. See also, United States v DiGrazia, 232 F Supp 213, (N.D. Ill. 1963); United States v Wells, 163 F 2d 313 (1980); United States v Abbott Laboratories, 369 F Supp 1396 (1973); United States v Whitted, 325 F Supp 520 (1971). Such is the case at bar.

A 1983 Texas case where an exonerated defendant sued two federal prosecutors for gross misconduct shockingly drives home the extent of such misconduct by some prosecutors. The ruling of the Federal judge indicated how far the particular prosecutors strayed from the "duty" imposed upon them by the Basurto Court. (Even more shocking, however, is how far the judge went to protect their actions.) Judge Gabrielle McDonald of the Southern District of Texas gave her opinion as follows, in ruling FOR the prosecutors:

> "Federal prosecutors are absolutely immune from liability for filing an information without investigation, filing charges without jurisdiction, filing a baseless detainer, **offering perjured testimony**, suppressing exculpatory information, or threatening a criminal with further prosecutions.
>
> "Federal prosecutors can lawfully involve themselves in **conspiracies** to violate the Constitutional rights of those they are prosecuting so long as it takes place in the judicial phase of the prosecutorial function. A prosecutor's immunity is extended to the **knowing use of false testimony** as such acts are an integral and necessary part to the prosecutor's role in judicial system.
>
> "The Court rules that **the alteration of Grand Jury**

transcripts falls within the scope of (the) prosecutor's role and that consequently the defendants are absolutely immune from liability damages. c.a. #H-70-341 (1983) Unpublished. (Emphasis added.)

This immunity is repugnant to Missouri Rules of Court, Bar and Judiciary, Rule 4, Rule 3.3 Candor Toward the Tribunal:

"(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client [in the case at bar, the federal government]

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client [in the case at bar, the federal government] and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by rule 1.6.

(c) a lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

In a case that never made it to court, and therefore is unpublished in legal journals, U.S. v Rowenhorst, two IRS agents claimed Rowenhorst had "backed them out of his store at gun point,

threatening their lives!". Rowenhorst was taken into custody, but released some 30 hours later with all charges dropped, when the U.S. Attorney learned from the IRS that there was a security camera which recorded the entire exchange between Rowenhorst and the IRS agents. The camera recording showed them leaving peacefully with a "Have a nice day", as they exited his door (Orange County Register, July 16, 1991.). The fact that the U.S. Attorney dismissed the charges without ever seeing the videotape seemingly confirms that he KNEW that the agents had lied when he allowed their affidavits initially.

Has the pressure for conviction become so intense that prosecutors will resort to ANYTHING to get a conviction, without concern for the human lives they are affecting? Many federal defense attorneys feel that this is indeed the case.

In the case of U.S. v Ivan Erlich, (9th Cir. 1989/90) the appellate court reversed the case because of gross misconduct involving the trial jury on the part of the government attorneys. Their tactics in the case involved the presentation to the trial jury every day of loose-leaf binders containing evidentiary material. Some notes had been scribbled by jurors in the books. The prosecutor reviewed those notes after the trial each day. This constituted "communication" with the jury as the notes would unfairly show the prosecutor how certain jurors were thinking. (The U.S. Attorneys were able to get the appellate ruling "decertified" and unpublished so it could not be used as precedent against them.)

Charges of prosecutorial misconduct are numerous in appellate filings; however, the procedures for proving prosecutorial misconduct are so complex that favorable decisions are almost non-existent. The "immunity" sticks!

Today's grand juries appear to "rubber stamp" the prosecutor's indictments. Further, today's trial juries appear inclined to "rubber-stamp" the grand jury indictments. Considering the apparently increasing tendencies of prosecutors and government agents to present false and perjured testimony, and distorted and misrepresented facts to the grand jury, it may be time to either

completely overhaul the grand jury system or to ELIMINATE it as the English did over six decades ago.

Prosecutors are also able to prevent defendants, in many cases, from obtaining copies of the testimony that took place before the grand jury. Such is the case at bar. Such testimony is withheld generally in the interest of protection of the witnesses. Thus hidden, an indictment obtained even with perjured testimony and/or altered or falsified evidence, is difficult to challenge or defeat. Perhaps this is one of the reasons that federal conviction rates are in the 98% range! If a prosecutor reveals that any witnesses who he intends to call at trial also testified before the grand jury, a defendant or his counsel can insist on a copy of the portion of the grand jury record of his testimony. A recent indictment was challenged in this way, and was defeated when it was pointed out to the district court judge that the witness, an IRS Special Agent, had misrepresented the elements of the law to the grand jury. Such is believed to be the case at bar. Daniel Webster observed, "God grants liberty only to those who love it, and are always ready to guard and defend it."

In the case at bar, the Grand Jury issued an indictment for 18 U.S.C. 111 and 26 U.S.C. 7212(b).

18 U.S.C. 111 states:

" a) In General. - Whoever -

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service, shall be fined under this title or imprisoned not more than three years, or both.

(b) Enhanced Penalty. - Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon, shall be fined under this title or imprisoned not more than ten years, or both."

However, IRS agents are not found in the definition of 18 U.S.C. 1114. "It is undisputed [The Internal Revenue Service] Manual controls the actions of Revenue Officers, and the Officers are obligated to follow its mandates." Romagnoio v United States, 96-1 USTC. The Manual distinguishes between BATF agents and IRS agents at Part XXXIV, Chapter 34(11)00, Section (34)11)20, (10)(a). The Manual specifically identifies only BATF agents, and not IRS agents, as being included in the scope of 18 U.S.C. 1114 (referred to in 18 U.S.C. 111) at Part XXXIV, Chapter 34(11)00, Section (34)11)20, (13)(a)5a. Petitioner was injured by being incorrectly charged with 18 U.S.C. 111.

> 26 U.S.C. 7212(b) states:
>
> "FORCIBLE RESCUE OF SEIZED PROPERTY. -- Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more that $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years."

Cannons of law can not show how the judgment of the court can be justified in light of this limited and specific language in the statute. "Where plain language of statute, supported by consistent judicial interpretation, is strong, it is not necessary to look beyond words of statute." Maine v Thiboutot, 100 S.Ct. 2502, 448 U.S. 1, 65 L.Ed.2d 555. The judge has re-written the statute as he has applied the sentencing. Further evidence is found in Document 168 and Document 169.

Violation of 7212(b) is charged against Appellant in Count three and against William White in Count two. "Co-defendant White did get into the vehicle and began to drive the vehicle before he was stopped by police officers who had arrived on the scene. It was this latter conduct which supported appellant's, as well as co-defendant William White's pleas of guilty. (Sentencing Transcript, 28)" Brief for Appellee, page 3. On January 31, 1996, Chief United

States District Judge D. Brook Bartlett ORDERed Count two against William White DISMISSED (Document #167). This alone should require this court to reverse the decision of the lower court. "[T]hat the convictions ... were constitutionally invalid ..[s]ince those convictions have been set aside, it follows ... that, therefore, the convictions of these petitioners must also be set aside." Shuttlesworth v Birmingham, 373 U.S. 262.

The courts "may not impose a charge for the enjoyment of a right granted by the Federal Constitution." Murdock v Pennsylvania, 319 U.S. 105 at 113. Petitioner refers to his constitutional right that " ...the accused shall enjoy the right to ... trial" [Amendment VI] "in law and equity, arising under this constitution" [Article III].

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CORAM NOBIS

"Coram nobis is a writ used to obtain review of a judgment for the purpose of correcting errors of fact in criminal...proceedings 18 Am. J. 2d Coram Nobis § 1." Ballentine's Law Dictionary, Third Edition, Edited by William S. Anderson, Lawyers Cooperative Publishing, 1996. Petitioner prays this court to correct errors presented herein.

Petitioner relies upon *stare decises*. [Also see discussion in Seminole Tribe of Florida v Florida, 116 S. Ct. 1114 (1996) of *stare decises* and its application.]

"The judicial Power 'is the power to hear and determine those matters which affect the life, liberty, or property of the Citizens of the State'" Sapulpa v Land, 101 Okla. 22, 223 Pac. 640, 35 A.L.R. 872.

"History is clear that the first ten Amendments to the Constitution were adopted to serve certain common law rights of the people against invasion by the Federal Government." Bell v Hood, 71 F. Supp. 813, 816.

"No act of Congress can authorize a violation of the Constitution." Almeida Sanchez v United States, 413 U.S. 266, 37 L. Ed. 2d 596, 93 S. Ct. 2535 (1973), at page 272.

"Where absence of proof of jurisdiction, all judicial proceedings are nullity." Thompson v Tolmie, 2 Pet 157, 7 LEd 381; Griffin v Frazier, 8 Cr 9, 3 LEd 471.

"Constitutional provisions for the security of person and property are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon' Boyd v United States, 116 U. S. 616, 635; Goulded v United States, 255 U. S. 298, 304." Byars v United States 273 U. S. 28, 32.

"Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient AWARENESS of the relevant circumstances and likely consequences." Brady v United States, 397 U. S. 742, 748.

CONCLUSION

"And if the doctrine of stare decisis has any meaning at all, it requires that people in their every day affairs be able to rely on our decisions and not be needlessly penalized for such reliance" Cf. Flood v Kuhn, 407 U.S. 258 at 283 (1972); Wallace v M'Connell, 13 Pet 136 at 150 (1839)" United States v Mason, 412 U.S. 39. Petitioner includes by reference all issues presented in the lower courts. Petitioner has based his actions and his arguments of defense upon Supreme Court decisions and documents, and prays this court based upon review of documents of the lower courts and arguments stated above (with benefit of liberal construction as mandated in Hines v Kerner, 92 SCt 594; 404 US 519; 30 LEd 2nd 652) to:

A. Vacate conviction and dismiss indictment with prejudice OR reverse decision of lower court with prejudice.

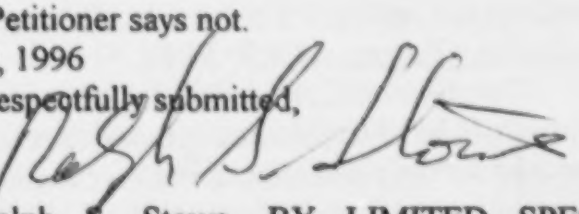
B. Declare the judgment in this case to be repugnant to the

intent of the statute. And if not moot, correct judgment by striking from the judgment all but the time hitherto served by Petitioner and returning "Special Assessments" taken from Petitioner.

FURTHER the Petitioner says not.

Date: August 30, 1996

Respectfully submitted,



Ralph S. Stowe, BY LIMITED SPECIAL APPEARANCE, IN PROPRIA PERSONA [NOT PRO SE], IN SUMMO JURE, AND IN JUS REGINUM
% 14403 St. Andrews Drive
Grandview, republic of Missouri [64030]
Available at phone number (816)767-0900

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA
V.
RALPH S. STOWE

JUDGMENT IN A CRIMINAL CASE
CaseNumber:4:94CR00101-1
File Stamped July 24, 1995
At 1:30 p.m.

Mark Osterman
Defendant's Attorney

THE DEFENDANT:
pleaded guilty to count 3 on 11/8/94
26 USC §7212(b)
Forcibly and unlawfully attempting to rescue seized property.
04/15/94
The defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.
Count 1 is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No: 356-34-9693
Defendant's Date of Birth: 03/01/45

07-19-95
Date of Imposition of Judgment
/s/D. Brook Bartlett
Signature of Judicial Officer

Defendant's Mailing Address:
11403 ST. ANDREWS DRIVE
GRANDVIEW, MO 64030

Defendant's Residence Address:
11403 ST. ANDREWS DRIVE
GRANDVIEW, MO 64030

D. Brook Bartlett
U.S. District Judge
Name & Title of Judicial Officer
July 24, 1995
Date

Document # 145

PROBATION

The defendant is hereby placed on probation for a term of 5 years. 5 years on Cont 3

While on probation, the defendant shall not commit another Federal, state, or local crime, shall not illegally possess a controlled substance, and shall not possess a firearm or destructive device. The defendant also shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the schedule of payments set forth in the financial penalties portion of this judgment. The defendant shall comply with the following additional conditions:

1. Defendant shall comply with the standard conditions that have been adopted by this Court.
2. Defendant shall not commit another federal, state or local crime during the term of probation.
3. Revocation for possession of a controlled substance or possession of a firearm are mandatory.
4. Defendant shall provide the Probation Office with access to any requested financial information.
5. Defendant shall reside for a period of 2 months, to commence upon arrangements by the Probation Office, in a Community Confinement Center with work release privileges and educational release privileges only in the Greater Kansas City area for educational requirement to maintain license. Defendant shall

observe the rules of the confinement center.

6. Defendant shall serve 3 months of home confinement by electronic monitoring with work release privileges and pay costs of electronic monitoring.

7. Defendant shall serve society in an activity approved by the Probation Office.

8. Defendant shall not enter Internal Revenue Service's Offices unless he calls in advance for an appointment.

9. Defendant shall file truthful income tax returns, pursuant to the Administrative Regulations of the Internal Revenue Service, during the term of probation.

10. Defendant shall not possess or know of any firearms in his residence, business or vehicle.

11. Defendant shall successfully participate in mental health counseling with emphasis on anger control as deemed appropriate by the Probation Office and pay costs.

Cost of probation waived by the Court. This waiver does not include any subsistence which may be required by the bureau of Prisons in community-based programs.

Judgment -- Page 2.01 of 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other

acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Judgment -- Page 3 of 4

FINANCIAL OBLIGATIONS

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below:
Count 3 Assessment $50.00 Fine $0.00 Restitution $0.00

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) fine costs; (5) interest; (6) penalties.

Total fine and other monetary penalties shall be paid as follows: in full immediately.

STATEMENT OF REASON

Guideline Range Determined by the Court:

Total Offense Level: 9

Criminal History Category: I

Imprisonment range 4 to 10 months.

Supervised Release Range: 1 to 1 years

Probation: 1 to 5 years with satisfying minimum term of confinement.

Fine Range: $ 1,000.00 to $ 10,000.00.

Fine waived or imposed below the guideline range, because of inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

File Stamped May 1, 1996
At 3:00 p.m.

No. 95-2971WMKC

United States of America, *
Appellee, * Appeal from the United States
vs. * District Court for the
Ralph S. Stowe, * Western District of Missouri
Appellant. * 94-101-01-CR-W-9

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

March 8, 1996

A true copy.

ATTEST: /s/ Michael E. Gans
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

MANDATE ISSUED
APR 25 1996
Document # 175

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-2971

United States of America, *
Appellee, * Appeal from the United States
vs. * District Court for the
Ralph S. Stowe, * Western District of Missouri
Appellant. * [UNPUBLISHED]

Submitted: March 6, 1996
Filed: March 8, 1996

Before McMILLIAN, WOLLMA, and MURPHY, Circuit Judges.

PER CURIAM.

Ralph S. Stowe entered an unconditional guilty plea to attempted forcible rescue of seized property, in violation of 26 U.S.C. § 7212(b), and the district court sentenced him to five years probation. On appeal, Stowe raises numerous jurisdictional and non-jurisdictional challenges to his conviction.

We reject as meritless Stowe's jurisdictional claims: the district court had jurisdiction over the instant offense under 18 U.S.C. § 3231, see United States v Rosnow, 977 F.2d 399, 412-13 (8th Cir. 1992) (per curiam) (§ 3231 "grants jurisdiction to district courts over all offenses against the laws of the United States"), cert. Denied, 507 U.S. 990 (1993), and over Stowe because he was a citizen of Missouri where he was gainfully employed. By his valid guilty plea, Stowe waived all the non-jurisdictional issues he now raises on appeal. See United States v McNeely, 20 F3d 886, 888 (8th Cir.)(per curiam), cert. Denied, 115 S.Ct. 171 (1994); United States v Stewart, 972 F.2d 216, 217-18 (8th Cir. 1992).

Finally, we conclude the district court did not err by requiring Stowe to file an affidavit of financial status before considering his motion for in forma pauperis status on appeal, see 28 U.S.C. § 1915(a), and we grant Stowe's motion to supplement the record.

The judgment is affirmed.

A true copy. Attest: /s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
MEMORANDUM

TO: Martha Hendon
Deputy Clerk

FROM: George G. Fagg
United States Circuit Judge

DATE: April 18, 1996

RE: No. 95-2971 United States v. Ralph S. Stowe
(Suggestion for Rehearing En Banc)

Please enter the following order in the above case:
The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

GGF:glm

/s/ EK & stamped:
Received
E-Mail
April 18, 1996
U.S. COURT OF APPEALS
EIGHTH CIRCUIT

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
V.	)	No. 94-00101-01-CR-W-9
RALPH S. STOWE,	)	
Defendant.	)	

MOTION TO WITHDRAW PLEA AGREEMENT

Comes now the Defendant by counsel and in response to the PRESENTENCE INVESTIGATION REPORT prepared by Christopher R. Buckman withdraws the PLEA AGREEMENT for the following reasons mis-represented in the aforementioned report:

page 2	Defendant's True Name is Ralph Shirley Stowe, and not as shown;
page 2	Defendant's Race is Caucasian, not White, Non-Hispanic as shown;
page 2	Defendant does not have a Social Security Number, report displays a number;
page 2	Defendant's Citizenship is dual, Citizen of the state of Missouri and citizen of the United States of America;
page 3 item 2	Defendant was NOT arrested, but appeared under threat of arrest by the United States Attorney (as found in Affidavit previously submitted), also Defendant was released on a $25,00 bond co-signed by Defendant's wife;
page 3 item 6	Defendant was indicted by Count 3 that charged him with Forcible Rescue of Seized Property, 26 USC 7212(b), not forcibly and unlawfully attempting to rescue seized

property as stated in report;

page 4 item a — Defendant was indicted by Count 3 that charged him with Forcible Rescue of Seized Property, 26 USC 7212(b), not forcibly and unlawfully attempting to rescue sized property as stated in report;

page 4 item b — Mr. Buckman reports agreement accurately here, but later discounts two-point reduction because of his "personal opinion";

page 4 item d — Defendant and the government agreed that 26 USC 7212(b) reads that "for every offense, be fined not more than $500.00 , or not more that double the value of the property so rescued, whichever is greater, OR be imprisoned not more than 2 years", a point overlooked by Mr. Buckman here and later ignored while trying to apply the United States Sentencing Commission Guidelines Manual;

page 4 item h — Special assessment to the Clerk of the Court was not discussed and agreed;

page 5 item 10 — Defendant disagrees;

page 5 item 11 — Defendant disagrees; Mr. Buckman attempts to embellish the facts with unsubmitted or verified statements (both about a weapon and about an account of an unverified alleged witness);

page 5 item 12 — Mr. Buckman refuses to include that Defendant called proper authorities for assistance (previously in court records);

page 6 item 14 — Mr. Buckman refers to a weapon which had an open cylinder and could not be fired in the condition found by the officer, nor was the plea agreement to involve the mention of a weapon, and the COUNT 1 which

mentioned a weapon was to be dismissed, rendering any reference to a weapon inappropriate;

page 6 item 16 — Pat Smith's statements can not be used, they were never asked to be admited as evidence, which could be rebutted;

page 6 item 19 — Mr. Buckman clearly states that "defendant did not directly threaten to shoot anyone";

page 7 item 20 — Defendant denies last sentence;

page 7 item 21 — Defendant does not know what a "trust account" is, but does know that according to IRS Manual a trust is a proper vehicle to protect an estate and lawfully reduce tax burden;

page 7 item 22 — Defendant denies that his actions were governed by an alleged "untax package" and Defendat has NEVER stated nor alluded to having established any trust to avoid paying taxes;

page 7 item 23 — Defendant did NOT mention that Karl Granse was taking over as manager of any trust. Mr. Buckman slanders Mr. Granse by addressing him as a "tax protester" but does not supply any indication of illegal activities;

page 7 item 26 — Mr. Buckman states that "No guidline has expressively been promulgated for this offense"[26 USC 7212(b). However, reading this section of the code results in the reader knowing that the upper limit of a fine OR imprisonment (see section for $500 or 2 years). Mr. Buckman fails to find an appropriate analogous guideline, but attempts to "fit" more serious crimes to make the guideline work. See 26 USC 7212(b);

page 8 item 27	Defendant can not agree with Mr. Buckman's argument that Robbery is applicable. At the very worst, conversion may apply;
page 8 item 28	26 USC 7212(b) speaks for itself;
page 8 item 30	Government is dismissing Count 1 and is therefore irrelevant;
page 8 item 31	Government is dismissing Count 1 and at the time and in the manner agreed to by both the Defendant and the Government, no weapon was used, therefore this point addition is inappropriate;
page 8 item 35	Defendant believes the total subtotal should be 6;
page 8 item 36	Defendant accepts his responsibility that reclaiming seized property is inappropriate irrespective of the lawfulness of the seizure. Defendant now realizes that judicial remedies are available and should be used. Mr. Buckman here wants to make Defendant pay a penalty for seeking judicial resolve of the issue. Defendant has always maintained that he is willing to pay all lawful taxes and has sought administrative remedy which has hitherto been withheld by the IRS. Defendant now knows that judicial review can be sought to determine proper assessment of any tax liability. Therefore, this item should be valued at -2 (see page 4 item b);
page 9 item 37	Defendant believes the total should be 4;
page 9 item 39	Defendant believes the correct total to be 4;
page 9 item 43	Defendant claims a local parking ticket over 20 years old having been properly resolved is irrelevant;

page 9 item 44 — See 43, redundant. Mr. Buckman asked Defendant about this incident and was told that it related to a parking ticket in Bolingbrook, Illinois. The habit of local youth was to remove tickets from vehicles which received parking violations. It was the custom of the city of Bolingbrook to issue warrants for the arrest of parking ticket violators (the city having many non-resident violators);

page 12 item 57 — 2nd Wife: was not raised in Kansas City nor did either she nor the Defendant "return". Also, reference by Mr. Buckman to divorce paperwork which was not verified by police report nor by Ms. Boice is inappropriate, especially in light of the fact that reference is made to "defendant shot at the front of her house and at her son's car while it was parked in the driveway". Mr. Buckman neglected to inquire of the police with respect to the shooting at Ms. Boice's house where Mr. Buckman would have discovered that the police was contacted by the Defendant and it was discovered that the caliber shot at the Boice household was not a caliber owned by the Defendant and that the Defendant was in Chicago at the time of the shooting. Defendant believes unverified statements to be inappropriate;

page 13 item 58 — Defendant states that Mr. Buckman could not possibly know what Defendant "intends to paint a picture of himself ...", especially in light of the fact that all information presented to Mr. Buckman was at his request. Mr. Buckman claims defendant to

	have "some type of mental and physical abuse during his previous marriages". Because Illinois and Missouri did not have no fault divorce available, common practice is to list "irreconsilable differences" , which are a far cry from the picture Mr. Buckman would like to paint;
page 13 item 59	Defendant denies sequence, emphasis, and speculation;
page 13 item 61	Defendant denies, also irrelevent;
page 14 item 63	"IRS authorities report ..." ?? what nonsense. How can one rationally address an unidentified source's opinion?
page 14 item 68	Defendant reported that he graduated in 3 years;
page 16 item 88	Defendant denies and irrelevant;
page 17 item 94	Defendant is currently establishing a practice and had a net salary in December 1994 of $487.00;
page 17 footnote 1	Defendant did not transfer the building to Joshua Management Trust;
page 18 item 95	Defendant has been open about finances and has been dismissed from Joshua Management Trust, and is currently establishing a practice;
page 18 item 97	Should be Level 6 with sentencing range of 0 to 6 months;
page 18 item 98	If Count 1 is dismissed it can not be added to Count 3;
page 19 item 100	Dismissed by government via PLEA AGREEMENT, and therefore is inappropriate, should be 0;
page 19 item 101	Inadmissable, should be 0;
page 19 item 105	Should be subtotal of 6;
page 19 item 107	Government agreed to -2;

page 19 item 108 Should be 4;
page 19 item 106 Count 3 only applies;
page 19 item 108 Total should be 4;
page 19 item 110 Total Offense Level should be 4;
page 19 item 111 Guideline Provisions:

Total Offense Level	4
Criminal History Category	I
Sentencing Range	0 to 6 months

page 19 item 112 Maximum sentence authorized by statute is limited to 2 years OR a fine.
page 20 item 113 Plea Agreement vacates claim by government of weapon;
page 20 item 114 Defendant has repeatedly admitted and accepted responsibility and is entitled to reduction.
page 20 item 119 Statutory Provision of 26 USC 7212(b) states a fine of not more than $500 only if not imprisoned;
page 20 item 121 Defendant denies;
page 20 item 122 Statute mandates EITHER fine OR imprisonment, not both;
page 21 item 125 Guide is given in the statute 26 USC 7212(b);
page 21 item 126 Robbery is not analogous, conversion at best could be argued;
page 21 item 127 Base level should be 6;
page 21 item 128 Count 1 is dismissed, therefore value is 0;
page 21 item 132 Subtotal should be 6;
page 21 item 133 Value should be -2;
page 21 item 134 Total Offense Level Subtotal should be 4;
page 21 item 136 Total Offense Level is 4
page 21 item 137 Guideline Provisions:

Total Offense Level	4
Criminal History Category	I
Sentencing Range	0 to 6 months

page 21 item 138 Maximum sentence authorized by statute is limited to 2 years OR a fine.

FURTHER the Defendant says not.

Respectfully subnitted,
/s/ Mark Osterman #

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of December, 1994 a true and correct copy of the foregoing was delivered to Richard J. Marien from Office of the United States Attorney, 1201 Walnut Street, Suite 2300, Kansas City, Missouri, [Federal Zone 64106-2149] by first class mail, postage pre-paid.

/s/ Mark Osterman